

**OFFICE OF THE GENERAL COUNSEL**  
**Division of Operations-Management**

**MEMORANDUM OM 04-76**

**July 29, 2004**

**TO:** All Regional Directors, Officers-in-Charge, and  
Resident Officers

**FROM:** Richard A. Siegel, Associate General Counsel

**SUBJECT:** Casehandling Instructions Regarding Cases Involving Card Check and  
Neutrality Agreements

Pending at various stages in the Agency are a number of cases implicating neutrality agreements and card check agreements. This memorandum outlines the major issues implicated in these cases. If a Region has an unfair labor practice case involving any of the issues discussed here, it should submit the case to Advice. If it has a representation case involving these issues, it should consult with the Executive Secretary regarding how to proceed. As indicated in OM 04-37, Regions are reminded to include information about cases involving these issues in the Case Activity Tracking System.

Recognition agreements are of varying complexity. They may be as simple as a statement of the means for establishing majority support and the employer's commitment to voluntary recognition if majority support is demonstrated. Alternatively, the agreement may cover not only recognition but also how an organizing campaign will be conducted. These latter agreements may, for example, limit what the employer and the union will say about the campaign, require the employer to provide the union with employee names and addresses or grant the union access to the facility to meet with employees. The issues discussed in this memorandum generally arise only in agreements entered into before the union gains majority status.<sup>1</sup>

One issue that arises in some of these cases is whether the recognition bar doctrine<sup>2</sup> should apply to recognition granted pursuant to a recognition agreement entered into before the campaign begins. In two pending RD cases, the petitioners argue that the recognition bar should not bar processing of a decertification petition in such circumstances. The Board granted the petitioners' request for review of the Regional Directors' decisions to dismiss the petitions based on the recognition bar and invited interested amici to file statements of position on the issue. See, *Dana*

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<sup>1</sup> Accordingly, Regions will usually not need to submit cases involving the application and enforcement of recognition agreements entered into after a union claims to have obtained majority support. If a Region has questions about whether a case should be submitted, it should contact the Division of Advice.

<sup>2</sup> See *Keller Plastics Eastern, Inc.*, 157 NLRB 583 (1966) (when voluntary recognition is supported by a demonstrated majority, for a "reasonable" period thereafter a union's majority support is irrebuttably presumed and processing of representation petitions will be barred).

*Corporation*, 341 NLRB No. 150 (June 7, 2004). The General Counsel has filed a position statement as amicus in these cases. That position statement is posted on the SAM bulletin board. As noted above, Regions should consult with the Executive Secretary regarding handling of representation cases implicating this issue. Unfair labor practice cases that implicate the recognition bar doctrine should be submitted to Advice.

A second class of issues involve whether terms contained in a neutrality agreement constitute unlawful assistance to the union - a violation in itself, as well as the basis for challenging an ensuing recognition. In some of these cases, terms governing the organizing campaign and election or card check procedures have been challenged. For example, several cases allege that in the neutrality agreement the parties committed to include specific terms in any collective bargaining agreement that would be reached after recognition. Other cases allege that in the neutrality agreements the parties limit their rights regarding negotiation of a contract (such as a union no-strike pledge or an agreement to go to interest arbitration if agreement is not reached within a specified period of negotiation). The Charging Parties allege that these types of agreements are unlawful under *Majestic Weaving*, 147 NLRB 859 (1964). Regions should submit to Advice any cases alleging that an employer granted unlawful assistance to a union by its agreement to what would be specific contract terms in the neutrality agreement.

In a third group of cases, charges have been filed alleging that an employer and a union agreed that the employer would require entities that it owns or does business with to execute a neutrality agreement. It is argued that such agreements are unlawful secondary agreements under Section 8(e).<sup>3</sup> Regions should submit any such cases to the Division of Advice.

Although Regions should complete their investigations before they formally submit these cases to Advice, they are encouraged to consult with Advice during the investigation process if they have any questions regarding the issues they should cover or the evidence relevant to those issues.

If you have any questions regarding this memorandum, please contact your Assistant General Counsel or Deputy or the Division of Advice.

/s/  
R.A.S.

cc: NLRBU  
Release to the Public

MEMORANDUM OM 04-76

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<sup>3</sup> See *Carpenters District Council of Northeast Ohio (Allesio Construction)*, 310 NLRB 1023 (1993).